

AMENDED IN ASSEMBLY MAY 15, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2274

Introduced by Assembly Member Lara

February 24, 2012

An act to amend ~~Section 391.7~~ *Sections 391.1, 391.2, 391.3, and 391.6* of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2274, as amended, Lara. Vexatious litigants.

Existing law provides that a defendant in any litigation pending in any court in the state may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security, based upon the ground that the plaintiff is a vexatious litigant, as defined, and has no reasonable probability of prevailing. Upon motion, existing law requires the court to consider specified evidence as may be material to the ground of the motion, but prohibits any determination made by the court to be or be deemed a determination of any issue in the litigation. Existing law requires the court to order the plaintiff to furnish security if, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail. Existing law provides that when a motion to require security is filed prior to trial, the litigation is stayed and the moving defendant is not required to plead until 10 days after the motion is denied or, if granted, 10 days after the required security has been furnished and the moving defendant has been given notice. Existing law provides that if a motion is filed any time after trial

begins, the litigation is required to be stayed for such period after the denial of the motion or the furnishing of the required security, as determined by the court.

This bill would additionally authorize a defendant to move for an order to dismiss litigation or to seek relief in the alternative, as specified. The bill would require the defendant to combine all grounds for relief in one motion.

This bill would require the court to order the litigation dismissed if, after hearing evidence on the motion, the court determines the litigation has no merit. The bill would specify that these provisions would only apply to litigation filed in a court of this state by a vexatious litigant subject to a prefiling order, as specified, who was represented by counsel at the time the litigation was filed and who became in propria persona after the withdrawal of his or her attorney.

~~Under existing law, a court may take specified actions with respect to a vexatious litigant, as defined. Existing law permits a court, on its own motion or the motion of any party, to enter a prefiling order that prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed.~~

~~This bill would instead permit, under those circumstances, the court to enter a prefiling order that prohibits a vexatious litigant from filing or maintaining any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed or has been filed.~~

~~Existing law also requires the presiding justice or presiding judge to permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay, and may condition the filing upon the furnishing of security for the benefit of the defendants.~~

~~The bill would also require the presiding justice or presiding judge to permit the maintenance of that litigation only if it meets the criteria described above.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 391.1 of the Code of Civil Procedure is*
2 *amended to read:*

3 391.1. In any litigation pending in any court of this state, at
4 any time until final judgment is entered, a defendant may move
5 the court, upon notice and hearing, for an order requiring the
6 plaintiff to furnish security *or for an order dismissing the litigation*
7 *pursuant to subdivision (b) of Section 391.3.* The motion must be
8 based upon the ground, and supported by a showing, that the
9 plaintiff is a vexatious litigant and that there is not a reasonable
10 probability that he will prevail in the litigation against the moving
11 defendant.

12 *SEC. 2. Section 391.2 of the Code of Civil Procedure is*
13 *amended to read:*

14 391.2. At the hearing upon ~~such~~ the motion the court shall
15 consider ~~such~~ any evidence, written or oral, by witnesses or
16 affidavit, as may be material to the ground of the motion. ~~No~~
17 *Except for an order dismissing the litigation pursuant to*
18 *subdivision (b) of Section 391.3, no* determination made by the
19 court in determining or ruling upon the motion shall be or be
20 deemed to be a determination of any issue in the litigation or of
21 the merits thereof.

22 *SEC. 3. Section 391.3 of the Code of Civil Procedure is*
23 *amended to read:*

24 391.3. ~~If, (a)~~ *Except as provided in subdivision (b), if,* after
25 hearing the evidence upon the motion, the court determines that
26 the plaintiff is a vexatious litigant and that there is no reasonable
27 probability that the plaintiff will prevail in the litigation against
28 the moving defendant, the court shall order the plaintiff to furnish,
29 for the benefit of the moving defendant, security in such amount
30 and within such time as the court shall fix.

31 **(b)** *If, after hearing evidence on the motion, the court determines*
32 *that the litigation has no merit and has been filed for the purposes*
33 *of harassment or delay, the court shall order the litigation*
34 *dismissed. This subdivision shall only apply to litigation filed in*
35 *a court of this state by a vexatious litigant subject to a prefiling*
36 *order pursuant to Section 391.7 who was represented by counsel*
37 *at the time the litigation was filed and who became in propria*
38 *persona after the withdrawal of his or her attorney.*

1 (c) A defendant may make a motion for relief in the alternative
2 under either subdivision (a) or subdivision (b) and shall combine
3 all grounds for relief in one motion.

4 SEC. 4. Section 391.6 of the Code of Civil Procedure is
5 amended to read:

6 391.6. ~~When~~ Except as provided in subdivision (b) of Section
7 391.3, when a motion pursuant to Section 391.1 is filed prior to
8 trial the litigation is stayed, and the moving defendant need not
9 plead, until 10 days after the motion shall have been denied, or if
10 granted, until 10 days after the required security has been furnished
11 and the moving defendant given written notice thereof. When a
12 motion pursuant to Section 391.1 is made at any time thereafter,
13 the litigation shall be stayed for such period after the denial of the
14 motion or the furnishing of the required security as the court shall
15 determine.

16 SECTION 1. ~~Section 391.7 of the Code of Civil Procedure is~~
17 ~~amended to read:~~

18 ~~391.7. (a) In addition to any other relief provided in this title,~~
19 ~~the court may, on its own motion or the motion of any party, enter~~
20 ~~a prefiling order that prohibits a vexatious litigant from filing or~~
21 ~~maintaining any new litigation in the courts of this state in propria~~
22 ~~persona without first obtaining leave of the presiding justice or~~
23 ~~presiding judge of the court where the litigation is proposed to be~~
24 ~~filed or has been filed. Disobedience of the order by a vexatious~~
25 ~~litigant may be punished as a contempt of court.~~

26 ~~(b) The presiding justice or presiding judge shall permit the~~
27 ~~filing or maintenance of that litigation only if it appears that the~~
28 ~~litigation has merit and has not been filed for the purposes of~~
29 ~~harassment or delay. The presiding justice or presiding judge may~~
30 ~~condition the filing of the litigation upon the furnishing of security~~
31 ~~for the benefit of the defendants as provided in Section 391.3.~~

32 ~~(c) The clerk may not file any litigation presented by a vexatious~~
33 ~~litigant subject to a prefiling order unless the vexatious litigant~~
34 ~~first obtains an order from the presiding justice or presiding judge~~
35 ~~permitting the filing. If the clerk mistakenly files the litigation~~
36 ~~without the order, any party may file with the clerk and serve, or~~
37 ~~the presiding justice or presiding judge may direct the clerk to file~~
38 ~~and serve, on the plaintiff and other parties a notice stating that~~
39 ~~the plaintiff is a vexatious litigant subject to a prefiling order as~~
40 ~~set forth in subdivision (a). The filing of the notice shall~~

1 ~~automatically stay the litigation. The litigation shall be~~
2 ~~automatically dismissed unless the plaintiff within 10 days of the~~
3 ~~filing of that notice obtains an order from the presiding justice or~~
4 ~~presiding judge permitting the filing of the litigation as set forth~~
5 ~~in subdivision (b). If the presiding justice or presiding judge issues~~
6 ~~an order permitting the filing, the stay of the litigation shall remain~~
7 ~~in effect, and the defendants need not plead, until 10 days after the~~
8 ~~defendants are served with a copy of the order.~~

9 ~~(d) For purposes of this section, "litigation" includes any~~
10 ~~petition, application, or motion other than a discovery motion, in~~
11 ~~a proceeding under the Family Code or Probate Code, for any~~
12 ~~order.~~

13 ~~(e) The presiding justice or presiding judge of a court may~~
14 ~~designate a justice or judge of the same court to act on his or her~~
15 ~~behalf in exercising the authority and responsibilities provided~~
16 ~~under subdivisions (a) to (c), inclusive.~~

17 ~~(f) The clerk of the court shall provide the Judicial Council a~~
18 ~~copy of any prefiling orders issued pursuant to subdivision (a).~~
19 ~~The Judicial Council shall maintain a record of vexatious litigants~~
20 ~~subject to those prefiling orders and shall annually disseminate a~~
21 ~~list of those persons to the clerks of the courts of this state.~~